XII-189 (Jail) C J.P.R./9-94

CF0000058369

(2)

APPEAL OF PRISONER

Division Bench (Crimi...)

No 1185/52 Name भुरसू

Father's name चमरू

Residence मु० उमरिया, थाना - बेलगहना Age 35 Year

Sentenced to जिला - बिलासपुर (म०प्र०) on 5/12/95

आजन्म कारावास

Under Section 460, 302 भा०द०वि० by चतुर्थ अति० सत्र न्यायाधीश, बिलासपुर (म०प्र०)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received 5/12/95

3 Date on which Appeal sent No. 237/Octagon/95, Date - 8/12/95

4 Whether the prisoner wishes to be represented or not हाँ

No 1185/52 Name भुरसू

Confined in प्रथम श्रेणी जिला Jail बिलासपुर

No. 237 Dated 8/12/ 1995

Forwarded to the माननीय रजिस्ट्रार, उच्च न्यायालय जबलपुर मध्यप्रदेश

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent 8/12
अधीक्षक
जिला जेल बिलासपुर

Date of receipt in _____ Office

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No _____ Dated _____ 199

Forwarded to the

Date of receipt in Appellate court

High Court of Madhya Pradesh
JABALPUR
15 DEC 1995
Reg. No. 9231
Recept Clerk
High Court, Jabalpur

(P. T. O.)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 1793 of 1995

Appellant : Bhursu

Vs.

Respondent : The State of Madhya Pradesh

Shri D.R.Sharma, learned Sr. Advocate with Shri B.P.Badgaiya, learned counsel for the appellant.

Shri G.K.Beriwal, learned Dy. Advocate General with Shri U.N.S. Deo, learned G.A. for the State/respondent.

ORAL JUDGMENT
(Delivered on 17th January 2006)

L.C.Bhadoo, J

By this appeal through Superintendent, District Jail Bilaspur the accused/appellant has questioned the legality of judgment of conviction and sentence dated 05.12.1995 whereby the learned 4th Additional Sessions Judge, Bilaspur after holding the accused/appellant guilty for commission of offence under section 460 and 302 of the Indian Penal Code has sentenced him to undergo Rigorous Imprisonment for 10 years and life imprisonment respectively. It was further directed that both the sentences should run concurrently. The accused/appellant is in detention since 1992.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. The prosecution case, in brief, necessary for disposal of this appeal is that PW-2 Shyam Singh, brother of the deceased lodged the First Information Report (P-3) at Police Station Lormi on 5.5.1989 at about 13.30 hours to the effect that in the preceding night he along with his wife and children were sleeping in his house and his elder brother Ram Singh was sleeping along with his family in his house. In the wee hours he heard the screams of his sister-in-law Gauribai (P.W.10) that murder has been committed. On hearing the screams of his sister-in-law he along with his wife Sukhbariyabai went to the house of his brother and saw that his sister-in-law Gauribai was weeping, he lit the kerosene lamp and in the light of that lamp he saw that body of his brother Ram Singh was in the pool of blood, some one had slit his neck with sharp edged weapon, one hand and leg were also cut. Ram Singh was breathing slowly and after some time he died. Shyam Singh and his wife tried to search the person in the nearby area in the light of the lamp but nobody was there. After hearing the sound neighbourer Buhdu Baiga also came there. Shyam Singh has stated that someone after entering the house of his brother had committed the murder. The investigating officer after registering the above First Information Report (P-3) left for the scene of occurrence, after giving notice (P-1) to the Panchas prepared the Panchanama of the body (P-2). Under (P-5) the clothes of the deceased which were handed over by the doctor, under P-7 the blouse and Sari of Gauribai, under P-8 one torch of two cells (Olympic) and under P-9 the blood stained soil and plain soil were taken into possession from the place of occurrence. Body of deceased Ram Singh was sent for post mortem examination to

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the Primary Health Centre Lormi where Dr. D. Lanj conducted the post mortem and prepared the post mortem report (P-12) and opined that the cause of death was shock and hemorrhage and the death was homicidal in nature. After completion of investigation the charge sheet was filed in the Court of Judicial Magistrate First Class Mungeli who in turn committed the case to the Sessions Judge, Bilaspur from where the 4th Additional Sessions Judge Bilaspur received the case on transfer for trial.

3. The prosecution in order to establish the charge examined 17 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure and the accused denied the prosecution evidence and stated that Gauribai was his wife, after deserting him she married some other person, therefore she has falsely implicated him in the crime. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in paragraph 1 of this judgment.

4. We have heard Shri D.R.Sharma, Sr. Advocate with and Shri B.P.Badgaiya, Advocate appearing for the accused/appellant and Shri G.K.Beriwal, Dy. Advocate General and Shri U.N.S. Deo, Govt. Advocate appearing on behalf of the State.

5. Having heard learned counsel for the parties, we have perused the judgment of the trial Court and the evidence and other relevant papers available on record. The homicidal death of Ram Singh is

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not in dispute. As far as involvement of the accused Bhursu in committing the murder of Ram Singh is concerned, the whole case rests on the evidence of sole eyewitness namely Gouribai (P.W. 10)- the wife of the deceased and corroborating evidence of Shyam Singh (P.W. 2) and his wife Sukbariyabai (P.W.3) who have stated that after hearing the screams of Gouribai (P.W.10) they went to the house of Ram Singh and there they saw the injured Ram Singh. Gouribai (P.W.10) has stated that in the fateful night, she along with her husband Ram Singh were sleeping in the house, the accused came with an axe and after removing the clothes from the body of Ram Singh attacked with the axe on his neck, waist and leg. She was able to see the accused in the fleshing light of the torch of three cells which the accused was carrying. She has further stated that she raised screams and on hearing the screams Shyam Singh came but before that the accused fled away. P.W.2 Shyam Singh and P.W. 3 Sukbariyabai have also stated in the Court evidence that Gouribai informed them that accused Bhursu has attacked and caused the injuries to Ram Singh. The above evidence of three witnesses stands belied and does not inspire confidence of the Court for the reasons that Shyam Singh (P.W.2) lodged the report next day i.e. 05.05.1989 at about 13.30 hours in Police Station-Lormi in which he has clearly mentioned that some unknown person has murdered his brother. Had Gouribai informed Shyam Singh about the commission of murder of Ram Singh by accused Bhursu, then there was no occasion for Shyam Singh not to mention the name of accused Bhursu in the First Information Report. So this fact belies the evidence of Gouribai (P.W.10),

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Shyam Singh (P.W.2) and Sukbariyabai (P.W.3). Shyam Singh (P.W.2) and Sukbariyabai (P.W.3) have improved their evidence before the Court, therefore, in material particulars their evidence cannot be believed.

6. Apart form that Gouribai has admitted in her evidence that the incident took place at about 12.00 in the mid night and the night was pitch dark and there was no visibility. She has stated that she was able to see the accused in the light of the torch. To utter surprise, as per the statement of Gourtibai (P.W.10) the torch was of three cells whereas the torch so recovered is of two cells. Moreover, there is no evidence to the effect that the torch recovered belongs to accused Bhursu, therefore, the theory of seeing the accused in the light of the torch is also not worth reliance. There is no circumstantial or other evidence to establish the involvement of the accused in the crime in question. The trial Court has mentioned in the judgment that as Gouribai (P.W.10) was married wife of accused Bhursu and as she left Bhursu and became the wife of the deceased and three children of Bhursu were also left at the residence of deceased Ram Singh, therefore, Bhursu was having animosity against Ram Singh and that is why there was a strong motive for commission of the crime by Bhursu. However, there is nothing on record which shows that Bhursu was having any animosity on account of the fact that Gouribai married Ram Singh. Moreover, the investigating officer has not been examined to establish the motive and no evidence has been adduced by the prosecution to establish that on account of marriage of Gouribai with Ram Singh after deserting accused

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Bhursu, accused Bhursu was having any grudge against Ram Singh.

7. As far as the question that accused Bhusru was absconding and he was arrested in the year 1992 i.e. after 2 ½ years of the incident is concerned, the investigating officer has not been examined to establish this fact that the accused remained absconding, therefore, there is nothing on record to show that the accused was absconding.

8. In view of the foregoing discussions, we are of the considered opinion that the judgment of the trial Court whereby the accused/appellant has been convicted and sentenced as above, cannot be sustained and the same is liable to be set aside, therefore, the appeal of the accused/appellant succeeds and the same is allowed. The judgment of conviction and sentence passed against the accused/appellant by the trial Court are set aside and he is acquitted of the charges under Sections 460 and 302 of the IPC. The accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Release

24.1.06 & 13.2.06

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